

USDC SCAN INDEX SHEET



PRICE

COUNTY OF SAN DIEGO

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3:94-CV-01917

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FILED

JUL 16 1997

CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 DEPUTY

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANN PRICE, et al.,	)	No. 94-1917-R(AJB)
	)	
Plaintiffs,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF IN LIMINE
v.	)	MOTION TO EXCLUDE SHERIFF
	)	DEPARTMENT DOCUMENTATION REGARDING
COUNTY OF SAN DIEGO, et al.,	)	ITS EVALUATION OF THE CITY OF SAN
	)	DIEGO'S IN-CUSTODY DEATH TASK FORCE
	)	REPORT
Defendants.	)	
	)	[In Limine Motion 5 of 10]

Hearing Date: July 14, 1997  
 Time: 10:30 a.m.  
 Place: Courtroom 5  
 Trial Date: July 28, 1997

Plaintiffs have marked as Exhibits 61, 67, 68, 69, 70, 71, 72 and  
 73 Sheriff's Department's documents containing departmental  
 personnel's review of the City of San Diego's In-Custody Death Task  
 Force Report. Said materials are irrelevant under Federal Rules of  
 Evidence, rule 402, and inadmissible under Federal Rules of Evidence,  
 rule 501, being privileged documents containing evaluations for  
 purposes of potential policy revisions regarding the hog-tie  
 restraint. Additionally, the documents constitute hearsay. F.R.E.,  
 rule 802.

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1 The documents generated within the Sheriff's Department were to  
2 address the issue of possible suffocation resulting from hog-tied  
3 arrestees. As such, they were intended to address whether revision of  
4 Sheriff's Department policies was necessary to enhance safety  
5 concerns. The documents are inadmissible as materials generated in  
6 connection with the potential adoption of subsequent remedial  
7 measures. F.R.E., rule 407. They are also inadmissible under the  
8 self-critical analysis privilege and deliberative process privilege.  
9 *Federal Trade Commission v. Warner Communications Inc.*, 742 F.2d 1156,  
10 1161 (9th Cir. 1984) [Government may withhold documents that reflect  
11 advisory opinions, recommendations and deliberations comprising a part  
12 of a process by which government decisions and policies are  
13 formulated.] See also *Granger v. National Railroad Passenger Corp.*,  
14 116 F.R.D. 507 (E.D.Pa. 1987) at 508-09 [Prohibiting disclosure of  
15 employer's equal opportunity goals, policies and affirmative action  
16 plans.]

17 In deciding whether the foregoing privileges may be overridden,  
18 the first consideration is the relevancy of the evidence. *Federal*  
19 *Trade Commission*, 742 F.2d at 1161. The identified exhibits are  
20 irrelevant because there is no proof of the preliminary fact that the  
21 hog-tie restraint is in fact physiologically adverse and causes  
22 asphyxiation. Plaintiffs may submit the evidence as proof that  
23 defendants had notice of the restraint's danger, however, plaintiffs'  
24 tender assumes that the restraint was in fact dangerous. The  
25 preliminary fact of the restraint's dangerousness and adversity must  
26 first be proven before documents may be used in any respect in this  
27 matter. F.R.E., rules 104(b), 402, 403. To admit the evidence  
28 without establishment of that preliminary fact wrongfully gives rise

1 to inferences regarding the dangers associated with the hog-tie  
2 restraint and irrevocably prejudices the defendants. F.R.E., rule  
3 403. Based upon the foregoing, said documents should be excluded at  
4 trial.

5 DATED: 6/16/97

Respectfully submitted,

6 JOHN J. SANSONE, County Counsel  
7 DIANE BARDSLEY, Chief Deputy

8 By 

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11 San Diego, Jim Roache, John Groff,  
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